

## TONY MARCHIONDO

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JUNE 27, 1952.—Ordered to be printed

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Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 657]

The Committee on the Judiciary, to which was referred the bill (H. R. 657) for the relief of Tony Marchiondo, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

## PURPOSE

The purpose of the proposed legislation is to pay the sum of \$3,482 to Tony Marchiondo, of Raton, N. Mex., in full settlement of all claims against the United States as reimbursement for certain Government pension checks payable to one Maria Manuela G. de Sena, a Civil War widow, negligently issued to her after her death, between January 31, 1934, and August 31, 1941, both inclusive, and fraudulently endorsed with her name and taken by Tony Marchiondo at his place of business in good faith for value received and without any notice or suspicion of their infirmity, and for which he was held accountable as subsequent endorser.

## STATEMENT

Maria Manuela, a Civil War widow, and the recipient of a pension payable to her under laws administered by the Veterans' Administration, died on January 3, 1934. In ignorance of her death, the Administration office continued to authorize the issuance of monthly checks in her favor. These items were paid to the First National Bank, Raton, N. Mex., by the Denver branch of the Federal Reserve Bank of Kansas City, acting on behalf of the Treasurer of the United States. Payment was made to the First National Bank, Raton, N. Mex., in reliance upon that bank's guaranty as to the genuineness of prior endorsements. Subsequently, the Veterans' Administration learned

of the payee's death, and an investigation conducted by the United States Secret Service disclosed that the checks were received by her grandson and cashed by means of forgery of the endorsement of her name. Consequently, demand was then made upon the First National Bank for refund and, upon that bank's refusal to comply, suit was instituted by the competent United States attorney in the United States District Court for the District of New Mexico. The bank brought in Mr. Marchiondo as a third-party defendant and judgment was entered against the bank for the sum of \$3,482 in favor of the Government, and against Mr. Marchiondo in favor of the bank. Mr. Marchiondo ultimately was forced by the bank to bear the entire loss. The grandson, Victor Encinias, was prosecuted for the forgery, convicted, and punished, and after his imprisonment it developed that he had no assets from which collection could be made from him.

The committee is advised that claimant is a man of good reputation in his community. He came to Raton and established a small store in 1913, at which the checks in question were cashed. As an immigrant with little knowledge of the English language and of the laws and customs of the country, he inquired of the bank when the checks were first presented to him whether he should accept them, and the bank advised him that he should do so by all means since they were as good as gold. Through the years he raised a family of 10 children, 7 of them boys and all of them in the service at the time the father was sued and forced to bear the entire loss.

At the time of her death, the records of the Government show that Mrs. Sena was 82 years of age, and it is reasonable to suppose that the Government would have inquired from time to time about her continued existence. The perpetration of this fraud on Mr. Marchiondo and the Government is a direct result of the failure and negligence on the part of the Government in continuing to issue checks to the woman after her death and in delivering those checks through its post-office box to a person not authorized under the law to receive them.

At the time of her death, Mr. Marchiondo was away, no publicity was given to her death, and neither he nor his family ever learned of the woman's death until after the Government discovered it and discontinued issuing the checks. Victor Encinias bore a good reputation and Mr. Marchiondo had no reason to suspect the fraud, and it is undisputed that Mr. Marchiondo acted in good faith at all times.

It is plain that the Government negligently and carelessly assumed the continued existence of Mrs. Sena, and that but for the negligence and carelessness of the Government in issuing the checks after her death and in continuing to deliver such checks in an unauthorized manner, the fraud could not have been perpetrated on Mr. Marchiondo and on the Government. The loss sustained thereby ruined Mr. Marchiondo financially, and the worry connected therewith ruined his health as well.

The Treasury Department opposes enactment of the instant legislation, and states that enactment of the bill would amount to a gratuity by the Government.

The committee realizes that there is no legal basis for payment of this claim, but is of the definite opinion that an equitable basis does exist to warrant compensation to claimant. The committee is of the further opinion that Mr. Marchiondo should not suffer because of the negligence of agents of the Government.

The committee believes that this claim is meritorious and therefore recommends favorable consideration of this bill (H. R. 657).

Attached to this report and made a part hereof are reports of the Treasury Department and a statement submitted on behalf of the claimant in connection with this bill.

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TREASURY DEPARTMENT,  
Washington, April 14, 1952.

HON. PAT McCARRAN,  
*Chairman, Committee on the Judiciary,  
United States Senate, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to H. R. 6444, a bill for the relief of sundry claimants, and for other purposes, which was passed by the House of Representatives on March 18, 1952, and is now pending before your committee.

Title II of the bill (H. R. 657, for the relief of Tony Marchiondo) would authorize and direct the Secretary of the Treasury to pay the sum of \$3,482 to Tony Marchiondo, of Raton, N. Mex., in full settlement of all claims against the United States as reimbursement for certain Government pension checks payable to one Maria Manuela G. de Sena, a Civil War widow, issued after her death and fraudulently endorsed with her name, and received by Tony Marchiondo at his place of business in good faith and for value.

It appears from the Department's file that the payee, a recipient of a pension payable to her under laws administered by the Veterans' Administration, died on January 3, 1934, and, thereafter, in ignorance of such fact, the administrative office continued to authorize the issuance of monthly checks in her favor. These items were paid to the First National Bank, Raton, N. Mex., by the Denver branch of the Federal Reserve Bank of Kansas City, acting on behalf of the Treasurer of the United States. Payment was made to the First National Bank, Raton, N. Mex., in reliance upon that bank's guaranty as to the genuineness of prior endorsements. Subsequently, the Veterans' Administration learned of the payee's death, and an investigation conducted by the United States Secret Service disclosed that the checks were received by her grandson and cashed by means of forgery of the endorsement of her name. Consequently, demand was then made upon the First National Bank for refund and, upon that bank's refusal to comply, suit was instituted by the competent United States attorney in the United States District Court for the District of New Mexico. On June 2, 1944, judgment was rendered in favor of the United States.

The liability of the endorsers of the subject checks having been judicially determined, the enactment of the proposed legislation would amount to a gratuity by the Government. Since cases of this general character requiring recovery from endorsers of amounts paid by the Government on wrongfully negotiated checks frequently arise, the enactment of title II of H. R. 6444 would not only discriminate against many other persons similarly situated but would also establish an undesirable precedent. Accordingly, the Treasury Department recommends that title II of H. R. 6444 be not enacted.

The Department has been advised by the Bureau of the Budget that enactment of this legislation would not be in accord with the program of the President.

Very truly yours,

E. H. FOLEY,  
*Acting Secretary of the Treasury.*

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SANTA FE, N. MEX., March 25, 1949.

HON. ANTONIO M. FERNANDEZ,  
*Congress of the United States,  
Washington, D. C.*

DEAR MR. FERNANDEZ: It has been brought to my attention that you are familiar with the case of the bad checks that my father took in some years ago and was later stuck for over \$4,000. To refresh your memory a little, a Mrs. Maria Manuela G. de Sena was the widow of Bibian Sena, a Civil War veteran, and as such received certain pension money from the Veterans' Administration. She died at Raton, N. Mex., on January 3, 1934, and her son continued to cash her checks by using forgery of her name then cosigning his name and cashing the checks with my father, who at the time of the lady's death was in New York and

knew nothing of her death until the day that the First National Bank in Raton came to him and told him that the Government had a suit against them for the money and that they in turn would sue my father, for same. This suit against my father came up around June 5, 1943, at which time or perhaps a little later seven of his sons were serving with the various services of the United States during World War II. It was a case of bullying my father into paying this because as I understand it, he was told that if he didn't pay his store would be closed. At that time none of his sons were here to assist him in this case so, through fear of losing his only source of income, he paid the bank. Now then, Mr. Fernandez, I sincerely think that the loss should be taken care of to my father through the Government because it was pure negligence on the part of the Government to continue these check payments without investigating once yearly on their issuance of money to persons receiving assistance. It is a poor Government when one has to suffer a loss so tremendous as this for an independent grocer, through neglect of the Government's own efforts to protect itself.

My father has a small independent business here in Raton, and surely when small losses affect his income, then how do you suppose the loss of over \$4,000 affected him? Well, it isn't very nice and you can realize that.

I appeal to you to take this matter up with the necessary persons in Washington, and further to introduce a bill to reimburse my father for the money concerned, if necessary. You made the statement once that you would help see an injustice made a justice, now I ask you to help us to the best of your ability.

Hoping that you will and the time to write me and sincerely requesting that you do all you can in clearing this matter as in the Nineteenth Legislative Assembly of this year in Santa Fe, N. Mex., we assisted a gentleman to acquire through an act \$5,000 that was rightfully his; and I think that this can be done through Congress in this case too.

Thanking you in advance for the cooperation I know you can extend me, and as I mentioned above, that you will find time to write me and that you can show some progress on this, I remain,

Respectfully,

JOE G. MARCHIONDO.

MARCH 11, 1943.

Hon. FRANCIS M. SHEA,  
*Assistant Attorney General.*

MY DEAR MR. SHEA: Transmitted herewith are photostatic copies of the following 88 checks drawn on the Treasury of the United States by J. B. Schommer, former disbursing clerk, Veterans' Administration, symbol 11-532, and G. F. Allen, Chief Disbursing Officer, Treasury Department, symbol 11-561, to the order of Maria Manuela G. de Sena, together with a copy of the pertinent file. Presenting bank: First National Bank, Raton, N. Mex.

No.	Date	Amount	Symbol	Date paid
15812182	Jan. 31, 1934	\$36	11-532	Feb. 6, 1934
16281061	Feb. 28, 1934	36	11-532	Mar. 6, 1934
16750780	Mar. 31, 1934	36	11-532	Apr. 6, 1934
17218637	Apr. 30, 1934	36	11-532	May 11, 1934
18099329	June 30, 1934	36	11-532	July 6, 1934
1193267	July 31, 1934	38	11-561	Aug. 9, 1934
1712107	Aug. 31, 1934	38	11-561	Sept. 10, 1934
2229067	Sept. 30, 1934	38	11-561	Oct. 6, 1934
5086866	Oct. 31, 1934	38	11-561	Nov. 10, 1934
5600722	Nov. 30, 1934	38	11-561	Dec. 10, 1934
6113643	Dec. 31, 1934	38	11-561	Jan. 8, 1935
6627487	Jan. 31, 1935	38	11-561	Feb. 6, 1935
7145264	Feb. 28, 1935	38	11-561	Mar. 8, 1935
7664030	Mar. 31, 1935	38	11-561	Apr. 6, 1935
8181807	Apr. 30, 1935	40	11-561	May 10, 1935
8714525	May 31, 1935	40	11-561	June 7, 1935
9246413	June 30, 1935	40	11-561	July 6, 1935
9772250	July 31, 1935	40	11-561	Aug. 6, 1935
10296126	Aug. 31, 1935	40	11-561	Sept. 7, 1935
10821003	Sept. 30, 1935	40	11-561	Oct. 5, 1935
11179831	Oct. 31, 1935	40	11-561	Nov. 7, 1935
11724690	Nov. 30, 1935	40	11-561	Dec. 6, 1935
12268562	Dec. 31, 1935	40	11-561	Jan. 9, 1936
12811398	Jan. 31, 1936	40	11-561	Feb. 8, 1936
13553138	Feb. 29, 1936	40	11-561	Mar. 9, 1936
13892895	Mar. 31, 1936	40	11-561	Apr. 6, 1936
14432675	Apr. 30, 1936	40	11-561	May 8, 1936
14972473	May 31, 1936	40	11-561	June 5, 1936



No.	Date	Amount	Symbol	Date paid
15511252	June 30, 1936	\$40	11-561	July 7, 1936
16050138	July 31, 1936	40	11-561	Aug. 7, 1936
16592966	Aug. 8, 1936	40	11-561	Sept. 4, 1936
17128776	Sept. 30, 1936	40	11-561	Oct. 6, 1936
17702680	Oct. 31, 1936	40	11-561	Nov. 7, 1936
18236818	Nov. 30, 1936	40	11-561	Dec. 5, 1936
18769964	Dec. 31, 1936	40	11-561	Jan. 8, 1937
19302000	Jan. 31, 1937	40	11-561	Feb. 6, 1937
19834136	Feb. 28, 1937	40	11-561	Mar. 6, 1937
20364153	Mar. 31, 1937	40	11-561	Apr. 6, 1937
20891310	Apr. 30, 1937	40	11-561	May 6, 1937
21416230	May 31, 1937	40	11-561	June 8, 1937
21941241	June 30, 1937	40	11-561	July 12, 1937
22465406	July 31, 1937	40	11-561	Aug. 9, 1937
22989722	Aug. 31, 1937	40	11-561	Sept. 7, 1937
23508835	Sept. 30, 1937	40	11-561	Oct. 7, 1937
24027999	Oct. 31, 1937	40	11-561	Nov. 6, 1937
24545987	Nov. 30, 1937	40	11-561	Dec. 7, 1937
25064003	Dec. 31, 1937	40	11-561	Jan. 7, 1938
25581848	Jan. 31, 1938	40	11-561	Feb. 10, 1938
26099095	Feb. 28, 1938	40	11-561	Mar. 5, 1938
26616096	Mar. 31, 1938	40	11-561	Apr. 7, 1938
27131312	Apr. 30, 1938	40	11-561	May 5, 1938
27646483	May 31, 1938	40	11-561	June 6, 1938
28161477	June 30, 1938	40	11-561	July 5, 1938
728647	Aug. 31, 1938	40	11-561	Sept. 6, 1938
1242663	Sept. 30, 1938	40	11-561	Oct. 4, 1938
1756863	Oct. 31, 1938	40	11-561	Nov. 4, 1938
2270987	Nov. 30, 1938	40	11-561	Dec. 6, 1938
2778301	Dec. 31, 1938	40	11-561	Jan. 7, 1939
3295415	Jan. 31, 1939	40	11-561	Feb. 4, 1939
3812501	Feb. 28, 1939	40	11-561	Mar. 6, 1939
4331474	Mar. 31, 1939	40	11-561	Apr. 7, 1939
4851555	Apr. 30, 1939	40	11-561	May 5, 1939
5372660	May 31, 1939	40	11-561	June 5, 1939
5893629	June 30, 1939	40	11-561	July 6, 1939
6411790	July 31, 1939	40	11-561	Aug. 5, 1939
6931021	Aug. 31, 1939	40	11-561	Sept. 8, 1939
7450267	Sept. 30, 1939	40	11-561	Oct. 6, 1939
7968294	Oct. 31, 1939	40	11-561	Nov. 9, 1939
8456321	Nov. 30, 1939	40	11-561	Dec. 8, 1939
9004403	Dec. 31, 1939	40	11-561	Jan. 6, 1940
10040368	Feb. 29, 1940	40	11-561	Mar. 7, 1940
17762647	May 31, 1941	40	11-561	June 3, 1941
10558554	Mar. 31, 1940	40	11-561	Apr. 8, 1940
11073609	Apr. 30, 1940	40	11-561	May 6, 1940
11588664	May 31, 1940	40	11-561	June 10, 1940
12108802	June 30, 1940	40	11-561	July 15, 1940
12629211	July 31, 1940	40	11-561	Aug. 5, 1940
13149512	Aug. 31, 1940	40	11-561	Sept. 7, 1940
13669694	Sept. 30, 1940	40	11-561	Oct. 5, 1940
14190013	Oct. 31, 1940	40	11-561	Nov. 5, 1940
14710168	Nov. 30, 1940	40	11-561	Dec. 5, 1940
15741422	Jan. 31, 1941	40	11-561	Feb. 6, 1941
16250456	Feb. 28, 1941	40	11-561	Mar. 11, 1941
16757468	Mar. 31, 1941	40	11-561	Apr. 7, 1941
17262621	Apr. 30, 1941	40	11-561	May 6, 1941
18260791	June 30, 1941	40	11-561	July 7, 1941
18761098	July 31, 1941	40	11-561	Aug. 7, 1941
19261339	Aug. 31, 1941	40	11-561	Sept. 8, 1941

It appears from the file that the payee died on January 3, 1934, and the matter of reclaiming the amounts of the checks, issued to her subsequent to that date was referred by the Veterans' Administration to the Division of Disbursement, Treasury Department, on February 2, 1942. The matter was in turn referred to the General Accounting Office and on May 4, 1942, the Comptroller General of the United States notified the Treasurer that the amounts of 92 checks issued from January 31, 1934, to August 31, 1941, would be charged to his account. Consequently, reclamation became necessary and on May 19, 1942, the First National Bank, Pueblo, Colo., was requested to refund the amount of check No. 15230387; the Trinidad National Bank, Trinidad, Colo., to refund the amount of check No. 28676462; First National Bank of Denver, Denver, Colo., to refund the amount of check No. 9522459; the First National Bank, Trinidad, Colo., to refund the amount of check No. 17684457; and the First National Bank, Raton, N. Mex., was requested to refund the amount of the remaining 88 checks. To date the amounts of checks No. 15230387, No. 28676462, No. 9522459, and No. 17684457 have been recovered and are being held in the Treasurer's reclamation suspense account.

On May 26, 1942, Arthur Johnson, vice president and cashier, First National Bank in Raton, N. Mex., stated, in reply to the Treasurer's request for refund: " \* \* \* We respectfully decline any liability whatever in connection with this matter."

In his report of the investigation dated July 18, 1942, Secret Service Agent Emmett B. Hargett advised that the checks were negotiated by Victor Encinias, the grandson of the payee.

Agent Hargett subsequently reported that the negotiator had pleaded guilty and had been sentenced for the offense.

On October 29, 1942, the First National Bank in Raton, Raton, N. Mex., was informed of the results of the investigation and again requested to refund the amounts of the checks. In reply to this request the bank stated in a letter dated November 9, 1952:

"In response to your renewed demand that we refund the amount of the checks, \$3,482, we are compelled to advise you that upon advice of our attorneys we decline any liability whatever in this matter.

"You have asked that we state our reasons for taking this position. The rules of law which appear to be involved are rather intricate and technical. We may add that, after an independent investigation of the facts, we are not prepared to admit or concede the correctness of the fact conclusions arrived at by your department. We shall not therefore undertake to set forth all of the reasons which lead us to take our present position, but we are glad to set forth for your information some of the reasons why we consider the demand for refund unjustifiable.

"With the exception of three or four of the checks, which apparently came to us from other banks in this vicinity, it appears that all of the checks in question were deposited with us for collection by our depositor Tony Marchiondo. We had nothing whatever to do with cashing any of the checks. We did not know the payee, and we had no way of determining the genuineness of the payee's endorsement.

"Tony Marchiondo takes the position that he is not liable and he would not, therefore, voluntarily reimburse us for any refund which we might make to you. If we should voluntarily accede to your demand, we should be compelled to bring suit against Marchiondo. And even if we should be successful in obtaining judgment against him, it is highly doubtful whether we could collect a judgment in any such large amount.

"If only one \$40 check were involved, the practical aspect of the matter might be considerably different. In that case our depositor would most likely be in a mood to protect us in any refund which we might voluntarily make. In other words, the magnitude of the amount makes a most decided difference.

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"In this case it would appear that the Government continued issuing these checks for a period of almost 8 years after the date when it is now asserted the pensioner died. Furthermore, we have been told that during that entire period the checks were delivered by the Raton post office to Victor Encinias, the very man who is asserted to have forged the payee's endorsements. If all this be true, it seems manifest to us that the loss was occasioned by the negligence and carelessness of the Government and that it would be unconscionable for the Government to ask us to bear the loss. Under these circumstances we think that the Government is precluded and estopped from questioning the genuineness of the endorsements."

In view of the Treasurer's inability to recover, the matter is referred to you for such action as you deem indicated for the protection of the interests of the United States.

Very truly yours,

NORMAN O. TIETJENS,  
Assistant General Counsel.

TREASURY DEPARTMENT, FIELD FORCE,  
UNITED STATES SECRET SERVICE,  
Albuquerque, N. Mex., July 18, 1942.

## SETTLEMENT REPORT

Payee: Maria Manuela G. de Sena.  
Check No.: 19,261,339 (see list attached).  
Symbol No.: 11-561.

Mr. FRANK J. WILSON,  
Chief, United States Secret Service,  
Treasury Department, Washington, D. C.

SIR: This case originated, AD file AWS-C.

Investigation discloses that payee died in Raton, N. Mex., on January 3, 1934; that she was the widow of a Civil War veteran, and that subject check was for pension money. Shortly before the death of payee, it was learned that on several occasions she accompanied her grandson Victor Encinias, the defendant in this case, to the New York Store-Golden Rule Store conducted by Tony Marchiondo at Raton, N. Mex., and there requested that her check be cashed. These checks were usually endorsed before she entered the store. She also made the request that on occasions when she did not come to the store personally that the store cash her check for her grandson whom she authorized to bring it to the store and cash it in her stead. Following the death of the payee on January 3, 1934, Victor Encinias received in a post-office box in his name in Raton, 90 checks payable to payee, forged her name and cashed them with Mr. Marchiondo. He forged and cashed two other checks elsewhere. His crime began with the January 31, 1934, check and ended with the above-numbered check, or August 31, 1941. List of all checks is attached. Mr. Marchiondo made several trips to home of payee, where she had resided with her grandson, over the years involved, taking along fruit on several occasions, and was always lulled by statements of the grandson or mother of the grandson, daughter of payee, that their mother was too ill to see him or that she was away on a short trip. Thus, in ignorance, did Marchiondo continue to cash the forged obligations in complete faith.

Victor Encinias was arrested in Raton, N. Mex., on July 11, 1942, and his case is now awaiting action of the grand jury. The file is being retained pending prosecution.

Very truly yours,

EMMETT B. HARGETT, Agent.

Approved:  
ROWLAND K. GODDARD,  
Supervising Agent.

TREASURY DEPARTMENT FIELD FORCE,  
UNITED STATES SECRET SERVICE,  
Albuquerque, N. Mex., September 26, 1942.

## FINAL SETTLEMENT REPORT

Payee: Maria Manuela G. de Sena.  
Check Nos.: 17262621, 17762647, 18761098, 19261339.  
Symbol Nos.: 11-561, 11-561, 11-561, 11-561.

Mr. FRANK J. WILSON,  
Chief, United States Secret Service, Washington, D. C.

SIR: This case originated, AD file AWS-C.

Defendant Victor Encinias was arrested in Raton, N. Mex., July 11, 1942, for the forgery and negotiation of 92 Government checks, payable to Maria Manuela G. de Sena, his deceased grandmother. Four of the said checks upon which the United States attorney instructed that a complaint be filed are listed above; the complete list accompanied the initial settlement report in this matter.

At Albuquerque, N. Mex., on September 24, 1942, the grand jury indicted the defendant on eight counts, four counts of forgery and four counts of passing. Defendant was arraigned before Federal Judge Colin Neblett at Albuquerque,

N. Mex., on September 24, 1942, and pleaded guilty to all counts. On September 25, 1942, at Albuquerque, N. Mex., he was sentenced by Judge Neblett to 6 months' imprisonment on each of the eight counts, the sentences to run concurrently.

This case is closed and all papers are returned to district for file.

Very truly yours,

EMMETT B. HARGETT, *Agent.*

Approved:

ROWLAND K. GODDARD, *Supervising Agent.*

